



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable L. A. Woods
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

Opinion No. 0-3408
Re: Whether the upper four grades
or the upper five grades are
high school, within Section
10 of H. B. 933, 46th Legis-
lature.

In your letter of April 15, 1941, you write that "some of the schools of Texas have a twelve grade system now, while the majority of them are still operating under the eleven grade system." Directing our attention to Section 10 of H. B. 933, 46th Legislature, which provides for a maximum of \$1.00 per pupil per month for not to exceed nine months as transportation aid on elementary pupils, and a maximum of \$2.00 per pupil per month for high school pupils, you request our opinion as to whether the upper four or the upper five grades in a twelve grade school are high school grades within the contemplation of Section 10 of said House Bill 933.

Sections 2, 3 and 4, S. B. 41, Ch. 20, p. 33, 1st C.S., 42nd Leg. read:

"Section 2. In the event such district as is mentioned in section one of this act fails to provide high school instruction in the proper grade for any such resident pupil, the board of trustees shall pay a reasonable rate of tuition for such pupils in any other public high school of this state or of any other state if the public high school in the other state is located in a district contiguous to the state line and is more convenient to the student than a Texas public high school; provided that if the school district is unable to pay said tuition and also maintain

an efficient elementary school as determined by the county board of trustees approved by the State Board of Education, the tuition or such part thereof as may be necessary, shall be paid by the State of Texas.

"Section 3. All such high school pupils as are subject to transfer under the transfer laws of this State shall be transferred and the receiving district shall grant free tuition to such transferred pupils for the length of term the state and county funds support the public schools of the race to which such transferred pupil belongs, such free school term for such pupil to begin with the date such transferred pupil enters the school of the receiving district.

"Section 4. High school grades within the meaning of this Act shall include the upper four grades in a public school system of eleven or twelve grades and shall not include school work of college rank."

The caption of the above Act was as follows:

"An Act to provide free tuition for all pupils over six years of age and not over twenty-one years of age in certain school districts; to provide for length of free term to be allowed transferred pupils; to provide for part-time schools, continuation schools, and evening schools for the purpose of the better education of adults; to define the meaning of high school grades; repealing all laws in conflict herewith; and declaring an emergency." (Emphasis ours)

In your letter you give us the following information regarding departmental practice:

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"The policy of the Equalization Division in the past years has been to regard the upper four grades as high school whether it be in an eleven grade system or in a twelve grade system."

You have also handed us a copy of an official proclamation made by you on April 16, 1941, addressed and sent to all county and local school superintendents in the State of Texas, and in which is contained the following:

"I hereby officially announce that the recognized pattern for Texas public schools is an elementary school of eight grades, followed by the standard four-year high school. May I ask you to work with your school boards in putting this plan into execution in your respective districts as soon as possible?

"This pattern may be changed to a six-grade elementary school, a three-year junior high school, and a three-year senior high school for those who desire the junior high school unit."

House Bill 933 does not define "high school" grades, nor does it say which grades are to be considered as elementary. However, considering the provisions of S. B. 41, 42nd Leg., aforesaid, particularly in light of its caption, and the established practice of your department, we have no hesitancy in saying that only the upper four grades in the twelve grade school should be considered high school within the meaning of said H. B. 933. See, *Wilson vs. Alsip*, 76 S. W. (2d) 288, Ky. Ct. of App.

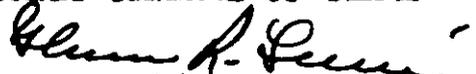
We have considered Article 2679, Revised Civil Statutes, but reach the conclusion that it may not be considered as establishing the upper five grades of such a school as high school grades. That statute was enacted for a different purpose than that.

APPROVED APR 24, 1941


FIRST ASSISTANT
ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY 
Glenn R. Lewis
Assistant

GRL:ej

